

FILED

filed

2007 OCT 31 PM 5:03

CLERK OF DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES
BY *[Signature]*

ISAGANI DE LA PENA
Name
00944-093
Prison Number
FEDERAL CORRECTIONAL INSTITUTION
PO Box 5300
ANELANTO, CA 92301
Address or Place of Confinement

Note: If represented by an attorney, write attorney's name, address & telephone number

United States District Court

CENTRAL DISTRICT OF CALIFORNIA

ISAGANI DE LA PENA
Full Name (First, Middle, Last)

530

CASE NO. 07-7150-K *CAGK*
(to be supplied by the Clerk of the
United States District Court)

Petitioner,

vs.

S.A. HOLENCIK,

Name of Warden
(or other authorized person having custody of petitioner)

Respondent.

PETITION FOR
WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241
BY A PERSON IN FEDERAL CUSTODY

PLEASE COMPLETE THE FOLLOWING (check the appropriate number):

This petition concerns:

1. ☒ a conviction
2. ☒ a sentence
3. _____ jail or prison conditions
4. _____ prison discipline
5. _____ a parole problem
6. _____ other

CAUTION: If you are attacking a federal conviction,
sentence or judgment, you must
first file a direct appeal or motion under
28 U.S.C. § 2255 in the federal court which
entered judgment.

DOCKETED ON CM
8 2007
BY *[Signature]*

PETITION

- (1) Place of detention: F.C.I. VICTORVILLE, ADELANTO, CA 92301
- (2) Name and location of court which imposed sentence: U.S. DISTRICT COURT FOR THE TERRITORY OF GUAM
- (3) Offense(s) and indictment number(s) (if known) for the sentence imposed:
1- 21 U.S.C. § 941 (a)(1); 2- SAME; 3- 21 U.S.C. 860; 4- 18 U.S.C. 922 (g)(1); 5- SAME; DISTRICT CT- No. 00-001261 (D. Guam)
- (4) The date upon which sentence was imposed and the terms of the sentence:
OCTOBER 9, 2002 -- 365 MONTHS IMPRISONMENT
- (5) What was your plea (check one): Not guilty (✓) Guilty () Nolo contendere ()
- (6) Kind of trial (check one): Jury (✓) Judge only ()
- (7) Did you appeal from the judgment of conviction or the imposition of sentence: Yes (✓) No ()
- (8) If you did appeal, answer the following for *each* appeal:

FIRST APPEAL:

Name of court: NINTH CIRCUIT COURT OF APPEALS

Grounds raised (list each):

- 1) _____
- 2) _____

Result/Date of result: AFFIRMED, FEBRUARY 26, 2003

SECOND APPEAL: 28 U.S.C. 2255 MOTION

Name of court: U.S. DISTRICT COURT OF GUAM

Grounds raised (list each):

- 1) VIOLATION OF RIGHT TO SPEEDY TRIAL
- 2) VIOLATION OF RIGHT AGAINST SELF-INCRIMINATION

Result/Date of result: DENIED, JULY 7, 2005

GROUND FOR THIS 28 U.S.C. § 2241 PETITION

- (9) State *CONCISELY* every ground on which you claim that your sentence is being executed in an illegal manner. Summarize *briefly* the facts supporting each ground. If necessary attach additional pages behind this page.

CAUTION: If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

→ GROUND ONE POST - CONVICTION INTERPRETATION OF STATUTE HAS RENDERED MR. DE LA PEÑA'S CONVICTION FOR § 860 (a) INVALID

Supporting *FACTS* for GROUND ONE (tell your story *BRIEFLY* without citing cases or law).

CAUTION: You must state *facts*, not *conclusions*, in support of your grounds. A rule of thumb to follow is -- who did exactly what to violate your rights at what time or place.

POST - CONVICTION INTERPRETATION OF STATUTE HAS MADE CLEAR THAT COUNT 2 -- DISTRIBUTION (21 U.S.C. § 841 (a) (1)) AND COUNT 3 DISTRIBUTION NEAR A PLAYGROUND (21 U.S.C. § 860) CAN BE CHARGED AT THE SAME TIME, BUT THE COURT MAY NOT, UNDER THE DOUBLE JEOPARDY CLAUSE, ENTER THE TWO AS SEPARATE CONVICTIONS BECAUSE § 841 (a) (1) IS A LESSER OFFENSE OF § 860. SEE ACCOMPANYING MEMORANDUM

→ GROUND TWO INEFFECTIVE ASSISTANCE OF COUNSEL

Supporting *FACTS* for GROUND TWO (tell your story *BRIEFLY* without citing cases or law).

COMPETENT COUNSEL WOULD HAVE OBJECTED TO THE ABOVE MENTIONED COUNTS ON DOUBLE JEOPARDY GROUNDS

ADMINISTRATIVE APPEALS

- (10) Have you presented the claims raised in Question #9 of this petition to prison officials in a prison administrations appeal?

Yes () No () If your answer is no, explain why not: _____

If your answer is yes, answer the following for *each* administrative appeal:

FIRST ADMINISTRATIVE APPEAL

Level of appeal: _____

Grounds raised (list each):

- 1) _____
- 2) _____

Result/Date of result: _____

SECOND ADMINISTRATIVE APPEAL

Level of appeal: _____

Grounds raised (list each):

- 1) _____
- 2) _____

Result/Date of result: _____

THIRD ADMINISTRATIVE APPEAL

Level of appeal: _____

Grounds raised (list each):

- 1) _____
2) _____

Result/Date of result: _____

FOURTH ADMINISTRATIVE APPEAL

Level of appeal: _____

Grounds raised (list each):

- 1) _____
2) _____

Result/Date of result: _____

- (11) Is the grievance process completed? Yes () No ()

PREVIOUS PETITIONS

- (12) Have you filed previous petitions for habeas corpus under 28 U.S.C. § 2241 or 28 U.S.C. § 2255, or any other applications, petitions or motions with respect to the claims raised in Question #9 of this petition?

Yes (☒) No ()

- (13) If your answer to Question #13 was yes, give the following information for *each* previous petition:

FIRST PREVIOUS PETITION

Name of court: DISTRICT COURT OF GUAM

Nature of proceeding: HABEAS # 2255

Grounds raised (list each):

- 1) MOTION TO VACATE
2) _____

Result/Date of result: DENIED 7-7-2005

SECOND PREVIOUS PETITION

Name of court: _____

Nature of proceeding: _____

Grounds raised (list each):

- 1) _____
2) _____

Result/Date of result: _____

- (14) If the claims raised in Question #9 of this petition concern your conviction or sentence, explain why you are filing your petition pursuant to § 2241 instead of § 2255.

PREVIOUSLY FILED # 2255

(15) Are you presently represented by counsel?

Yes ()

No (✓)

If so, provide your attorney's name, address, and telephone number:

(16) If you are seeking leave to proceed *in forma pauperis*, have you completed the application setting forth the required information?

Yes ()

No (✓)

Note: If your answer is no, you must send a \$5.00 filing fee to the court with your petition.

WHEREFORE, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

October 3, 2007

(Date)

Isagani De La Pena
(Signature of Petitioner)

Isagani De La Pena/Movant
Petitioner

Isagani De La Pena
(Signature of Attorney, if any)

Isagani De La Pena/Propria Persona

Isagani De la Pena
Reg. No. 00944-093
Federal Correctional Institution
Victorville I
P.O. Box 5300
Adelanto, CA 92301

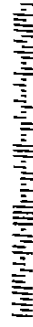


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United States District Court
Central District of California
Clerk of the Court
312 N. Spring Street
Los Angeles, CA 90012

LEGAL MAIL

2241



The enclosed letter was processed through special mailing procedures for forwarding to you. The letter has been reviewed and inspected. If the writer has a question or problem over which he has just decided, you may wish to see the material for further information. If the writer encloses evidence for forwarding to the writer, please return to the above address.

OCT 10 2007